

**OREGON COASTAL NONPOINT PROGRAM
NOAA/EPA PROPOSED FINDING**

B. OPERATING ONSITE SEWAGE DISPOSAL SYSTEMS

PURPOSE OF MANAGEMENT MEASURE: The purpose of this management measure is to minimize pollutant loadings from operating onsite sewage disposal systems (OSDS) by inspecting them at a frequency adequate to ascertain whether they are failing.

CONDITION FROM JANUARY 1998 FINDINGS: Within two years, Oregon will finalize its proposal to inspect operating OSDS, as proposed on page 143 of its program submittal. (1998 Findings, Section IV.C).

PROPOSED FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon requires all alternative decentralized treatment systems (including sand filter systems, pressure distribution systems and recirculating gravel filter systems) to have service contracts with certified maintenance providers and annual reports to be submitted to local onsite management systems agents (OAR 340-071). Owners of these systems must submit annual reports to Oregon DEQ. Failure to submit an annual maintenance report results in an enforcement process which may include a civil penalty (OAR 340.012.0060). For these systems, the inspection requirements of the OSDS management measure have been met. According to Oregon DEQ estimates, these currently account for 10 percent of the OSDS in the coastal nonpoint management area, although the proportion of these systems is growing over time; for instance, a survey of all newly permitted surveys in Oregon's coastal counties revealed that nearly 30 percent were alternative systems required to have annual maintenance contracts.

For the remainder (conventional septic systems), Oregon proposes to meet the management measure for OSDS inspection by promoting voluntary time-of-transfer inspections and through education of homeowners and realtors, with incentives for tracking by certified inspectors. NOAA and EPA will approve such a voluntary or incentive-based program as long as the State provides: a description of the voluntary or incentive-based programs the states will use to encourage implementation of the management measures, including the methods for tracking and evaluating those programs; a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary. Oregon has provided these items.

With regard to Oregon's voluntary, incentive-based approach, Oregon has developed a comprehensive strategy. Oregon enacted a law which became effective in January 2014 that expands mandatory disclosure on the condition of OSDS on the Seller's Disclosure Statement for

all real estate transactions (ORS 105.464). Answers to descriptive OSDS questions, as well as supporting materials specific to OSDS inspection, maintenance and repair, must be provided to the buyer prior to closing (ORS 105.464). Oregon believes this information will raise awareness of OSDS issues and prompt the buyer to obtain an OSDS inspection as part of the real estate transaction, similar to home inspections that are now routine for residential real estate transactions.

This voluntary approach also relies on a partnership between Oregon DEQ and the Oregon Association of Realtors (OAR), formalized in a Memorandum of Understanding (MOU) signed in November 2013, which is aimed at increasing voluntary time-of-transfer inspections of OSDS. The MOU commits Oregon DEQ to: develop an educational packet for new home buyers and to train realtors on the importance of regular septic system maintenance; amend the buyer and seller advisories to include recommendations for septic system inspection at time of property transfer; and collaborate with the Oregon Bankers Association to determine lender requirements for loans involving properties served by septic systems. To date, Oregon DEQ has developed a variety of educational materials for homeowners, home buyers, and industry professionals, all of which are packaged in a new Oregon Septic Smart program, which is modeled after EPA's national Septic Smart program. The Oregon Septic Smart program is designed to help educate Oregonians about the importance of septic systems, septic system inspections and proper septic system maintenance through providing Oregonians with easy access to important information about their septic systems and with easy access to certified industry professionals that perform septic system inspections.

Additionally, OAR has committed to supporting these outreach and educational efforts and conducting their own complementary efforts. Oregon DEQ and OAR have collaborated to provide OSDS classes to each of Oregon's 30 realtor associations to encourage time-of-transfer OSDS inspections and provide information on proper OSDS operation and maintenance. This class is also available as an hour-long webinar for associations that cannot accommodate an in-house OSDS class. The target for realtor outreach is to provide a class to all 30 associations by June 2015. As of July 2014, 47 percent of associations have hosted an in-house OSDS class and an additional 10 percent have scheduled an in-house class within the 2014 calendar year. As of July 2014, nearly half of the realtors active in Oregon's coastal counties have taken this new course. OAR and DEQ are also committed to working with the Oregon Real Estate Agency to include the OSDS curriculum in the Law and Rule Required Course – a mandatory class that all brokers in Oregon must attend in order to maintain their real estate broker license (ORS 696.174 and OAR 863-022-0055). Additionally, the collaboration will yield articles to be published in the Oregon Real Estate Journal and Local Focus (official journal for the League of Oregon Cities) aimed at encouraging local governments to partner with Oregon DEQ to pursue and strengthen local OSDS initiatives.

Oregon DEQ's Septic Smart website also includes a list of certified industry professionals that perform septic system inspections. Approved OSDS inspectors who want to be listed on DEQ's Oregon Septic Smart website must participate in the Oregon Septic Smart program. DEQ is

conducting targeted outreach to inform industry professionals about Septic Smart and encourage participation. For example, Oregon DEQ gave a presentation at the Oregon Onsite Wastewater Association annual conference in March 2014 to introduce Oregon Septic Smart and Oregon's expanded time-of-transfer disclosure requirements, which was attended by more than 190 participants.

While participation in Oregon Septic Smart is voluntary, it provides a competitive business advantage for certified inspectors. In order to maintain eligibility for Oregon Septic Smart, all approved inspectors must present evidence that all certification requirements are up-to-date and submit annual reports to DEQ which identifies their inspection activities during the previous calendar year. Oregon DEQ is relying on this as a key tracking mechanism for implementing this management measure. Although Oregon Septic Smart was introduced as a new program in January 2014, already by July 2014, 95 of the state's ~630 certified inspectors statewide (15 percent) had chosen to participate in it. Oregon's database reveals the heaviest participation in its coastal counties, with 40 of its participants (42 percent) primarily serving these counties. Participation rates are tracked monthly by Oregon DEQ and are rising steadily. As the Oregon Septic Smart brand grows and the business advantages are recognized by more wastewater professionals, Oregon DEQ foresees the time when a majority of active certified inspectors will have joined Oregon Septic Smart and will submit annual reports on septic system inspections to the State.

The State has established a goal with interim milestones for its voluntary incentive-based program, as well as a strategy for tracking and evaluating the effectiveness of its voluntary incentive-based program to implement this management measure. Specifically, Oregon expects that within 15 years, these collective efforts will result in inspection of 95 percent of all the OSDS associated with property transfers across the coastal nonpoint management area. Oregon DEQ has set an interim goal to achieve inspections for 60 percent of residential property transfers involving OSDS in the coastal counties by 2014 and 80 percent by 2020. Oregon is tracking the effectiveness of the State's voluntary initiative, primarily through the annual reporting requirements by certified inspectors who participate in Oregon Septic Smart, as described above. The annual reports require separate tracking of OSDS inspections associated with property transfers (versus inspections conducted for other reasons, which are also tracked). The report includes information on the number and outcomes of OSDS inspections. Collectively, these reports will help to guide outreach and enforcement efforts at the county level. This tracking will be augmented by other lines of evidence, including information from lenders, brokers, realtor surveys, and GIS analysis, as described below.

With the passage of Oregon's expanded OSDS seller disclosure forms, a growing number of lenders and principal brokers are choosing to retain records of these forms; DEQ is working with the lending community and brokers to augment its tracking of OSDS inspections during time of transfer. Additionally, the Oregon Septic Smart website hosts a survey for new home buyers to ask whether a septic system inspection was included as part of the home buying process, and Oregon DEQ is working with realtors to encourage these buyers to take the survey.

The State also will prioritize its efforts to prevent failures by identifying areas that meet two primary conditions: 1) a specific area classified as high risk for OSDS failure, using Geographic Information System (GIS), and 2) tracking reports that indicate that OSDS inspections are uncommon in this area. Areas that meet both of these conditions will be prioritized for targeted evaluation. Toward this end, Oregon DEQ is developing a GIS tool that it intends to use to proactively identify coastal areas that have a high risk for OSDS failures. In September 2014, Oregon DEQ completed mapping and analysis of a pilot area within Lincoln County (along the coast). This model will be used to identify high risk areas throughout the coastal nonpoint management area where the State will conduct more targeted outreach and provide resources for OSDS repair and replacement. A similar approach has been used previously in another Oregon county outside the coastal nonpoint management area to provide focused outreach and resources to address problems.

Results from these various tracking mechanisms will be analyzed for potential inconsistencies and used to identify focus areas for further outreach and evaluation. Taken collectively, Oregon will use an overall weight-of-evidence approach to inform decisions regarding additional outreach and evaluation efforts, as well as the need for a regulatory time-of-transfer inspection program.

As noted above, for NOAA and EPA to approve a voluntary or incentive-based program, the State also must provide: a legal opinion that back-up enforceable authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; a description of the mechanism or process that links the implementing agency with the enforcement agency; and a commitment to use the existing enforcement authorities where necessary. In the event the State's voluntary approach falls short, Oregon has committed to use ORS 454.625 and ORS 468.020 to propose rules for adoption by the Oregon Environmental Quality Commission (EQC) to implement the inspections element of the Operating OSDS management measure. In the event the EQC does not pass adequate rules, the Oregon Attorney General's Office has provided a legal opinion asserting that the State has adequate back-up authority (ORS 468B et. seq.) to require implementation of the 6217(g) management measures, as necessary. Specifically, the state has the authority under ORS 468B.015 and ORS 468B.020 to prevent and control pollution from any nonpoint source, including OSDS.